

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CM Construction Company, Inc.,

Plaintiff,

vs.

Civil File No. 19-CV-_____(____/____)

NOTICE OF REMOVAL

The Travelers Indemnity Company,

Defendant.

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant The Travelers Indemnity Company hereby removes this action to the United States District Court for the District of Minnesota. In support of its removal from the District Court for the County of Hennepin, State of Minnesota, Fourth Judicial District, Travelers states and alleges as follows:

1. On or about March 18, 2019, Plaintiff CM Construction Company, Inc. commenced this action against Travelers in the District Court for the County of Hennepin, State of Minnesota, Fourth Judicial District, by serving Travelers with a copy of a Summons and Complaint. A copy of the Summons and Complaint served on Travelers, which did not include a copy of the State's Answer and Counterclaims (referenced as Exhibit A in Paragraph 12 of Plaintiff's Complaint), is attached hereto as Exhibit 1 and incorporated herein by reference. A copy of the State's Answer and Counterclaims is attached hereto as Exhibit 2 and incorporated herein by reference.

2. On or about March 19, 2019, Plaintiff filed this action in Hennepin County District Court, Case No. 27-CV-19-4221. Travelers has not yet served an Answer to the Complaint.

3. This is an insurance-coverage action in which Plaintiff seeks additional insured coverage under a commercial general liability policy of insurance that Travelers issued to Cobalt Excavating Inc. DBA Cobalt Contracting, Inc. (the “Policy”) in connection with a counterclaim that was asserted against Plaintiff on or about March 19, 2018, in a lawsuit that Plaintiff commenced against the State of Minnesota, Department of Military Affairs on or about February 8, 2018, in the District Court for the County of Ramsey, State of Minnesota, Second Judicial District, captioned *CM Construction Company, Inc. v. State of Minnesota, Department of Military Affairs*, Court File No. 62-CV-18-861 (the “Underlying Lawsuit”). The Underlying Lawsuit is pending in Ramsey County District Court.

4. In this action, Plaintiff asserts a single cause of action for declaratory judgment against Travelers, seeking a judgment declaring that:

- a. The claims asserted against Plaintiff in the Underlying Lawsuit are covered under the terms of the Policy;
- b. Travelers is obligated under the Policy to defend and indemnify Plaintiff from and against the claims asserted against Plaintiff in the Underlying Lawsuit; and
- c. Travelers is liable to Plaintiff for all damages, costs, and attorney’s fees Plaintiff incurs in connection with the Underlying Lawsuit and this action.

5. Besides Plaintiff’s Summons and Complaint (Exhibit 1), Travelers has not been served with any other process, pleadings, or orders in this action.

6. This action is one that this Court has original jurisdiction pursuant to the provisions of 28 USC § 1332, and is one that may be properly removed to this Court pursuant to the provisions of 28 USC § 1441(a) and 1446, in that the controversy is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs:

a. On information and belief, Plaintiff is a citizen of the State of Minnesota in that it is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in Burnsville, Minnesota. *See* Ex. 1 at ¶ 1.

b. Travelers is a citizen of the State of Connecticut in that it is a corporation organized and existing under the laws of the State of Connecticut with their principal places of business in Connecticut.

c. On information and belief, the amount in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs, given:

i. This action is an insurance-coverage proceeding in which Plaintiff seeks insurance coverage, including both a defense and indemnity, with respect to a construction dispute that has been pending for more than a year;

ii. The State's Counterclaim in the Underlying Lawsuit seeks damages in excess of \$50,000.00, *see* Ex. 2, which Plaintiff

contends are amounts covered under the Policy and therefore recoverable from Travelers in this action;

iii. Plaintiff informed Travelers by letter dated October 22, 2018, that it is seeking coverage from Travelers for damages in excess of \$245,000; and

iv. Plaintiff has incurred defense costs in connection with the Underlying Lawsuit that Plaintiff also contends are amounts covered under the Policy and therefore recoverable from Travelers in this action.

7. The United States District Court for the District of Minnesota is the District Court for the district embracing the entire State of Minnesota, including Hennepin County where this action is currently pending. *See* 28 U.S.C. § 103. Venue is therefore proper in this district pursuant to 28 U.S.C. § 1441(a).

8. This Notice of Removal is being timely filed under 28 U.S.C. § 1446(b) and (c) in that it is being filed less than thirty (30) days after Plaintiff's commencement of this action.

9. Promptly after filing of this Notice of Removal, Defendant will cause a copy thereof to be filed with the State Court and cause written notice of this Notice of Removal to be served on Plaintiff. A true and correct copy of Defendant's Notice of Filing of Notice of Removal being served upon Plaintiff and being filed with the State Court is attached as Exhibit 3.

10. Defendant has paid the required filing fee and is filing a Civil Cover Sheet simultaneously herewith.

11. Defendant has a good and sufficient defense to this action.

12. Defendant makes no admission of liability by this Notice and expressly reserves the right to raise all defenses and objections to Plaintiff's claims after this action is removed to the above Court, including, without limitation, any objections to the merits and sufficiency of Plaintiff's pleadings.

13. For these reasons, this action may be removed to this Court under 28 USC § 1446(a).

WHEREFORE, Defendant prays that this action, which is currently pending in the District Court for the County of Hennepin, State of Minnesota, Second Judicial District, and all further proceedings in this action be conducted in the United States District Court for the District of Minnesota as provided by law.

Respectfully submitted,

O'MEARA, LEER, WAGNER & KOHL, P.A.

Dated: April 4, 2019.

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